

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

*** DOCKET NO. 2021-3497-ETHICS-A**

IN THE MATTER OF

TERRY W. SERCOVICH

*** AGENCY TRACKING NO. 5121-036**

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested an adjudicatory hearing to have the Ethics Adjudicatory Board determine whether Terry W. Sercovich failed to file his 10-G campaign finance disclosure report by the eleventh day after it was due, in connection with his 2020 candidacy for District Attorney, 25th Judicial District Court. The Louisiana Board of Ethics proved by clear and convincing evidence that Terry W. Sercovich failed to file the report as alleged. The Louisiana Board of Ethics is authorized to impose an additional civil penalty not to exceed \$10,000 against Terry W. Sercovich pursuant to Louisiana Revised Statutes (La. R.S.) 18:1505.4(A)(4)(b).

APPEARANCES

The adjudicatory hearing was conducted on October 27, 2021, in Baton Rouge, Louisiana, before Panel A of the Ethics Adjudicatory Board.¹ Charles E. Reeves, Jr., appeared as counsel on behalf of the Louisiana Board of Ethics. Though properly noticed, Terry W. Sercovich did not appear for the hearing.²

¹ The panel consisted of administrative law judges A. Brock Avery (presiding), Lance B. Vinson, and Sherlyn Shumpert.

² On August 4, 2021, the *Conference Report and Order* setting this matter for hearing and Division of Administrative Law correspondence notifying Mr. Sercovich of the hearing date and time were mailed to his last known address and emailed to his last known email address. These documents are parts of the record in this matter; the Board of Ethics also included them as BOE-10, an exhibit that was admitted into evidence.

JURISDICTIONAL AUTHORITY

The Ethics Adjudicatory Board (EAB) is a legislatively created board, as contemplated by Louisiana Constitution article X, section 21.³ The EAB has original jurisdiction under La. R.S. 42:1141.5 to determine whether violations of the Code of Governmental Ethics (Ethics Code), La. R.S. 42:1101, *et seq.*, have been committed, and the EAB has jurisdiction under La. R.S. 18:1505.4 to conduct hearings regarding specific violations of the Campaign Finance Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*

This adjudication is conducted in accordance with the Ethics Code, the CFDA, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation for the Division of Administrative Law, La. R.S. 49:991, *et seq.*

STATEMENT OF THE CASE

In connection with his 2020 candidacy for District Attorney, 25th Judicial District Court, the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure (BOE), assessed a civil penalty against Terry W. Sercovich (Respondent) for failing to timely file the campaign finance disclosure report was due by the tenth day before the general election (10-G report). After assessing the civil penalty, the BOE requested a hearing to have the EAB determine whether Respondent failed to file his 10-G report by the eleventh day after it was due, which may subject him to an additional civil penalty not to exceed \$10,000, pursuant to La. R.S. 18:1505.4(A)(4)(b).

Counsel for the BOE offered 11 exhibits during the hearing, which were admitted into evidence. Counsel presented the case on behalf of the BOE, after which the record was closed and the matter taken under advisement.

³ See La. R.S. 42:1141.2 *et seq.*

FINDINGS OF FACT

- 1) Respondent qualified as a candidate for District Attorney, 25th Judicial District Court, in the November 3, 2020, primary election.⁴ Respondent received 15 percent of the vote in the primary election and did not qualify to participate in the December 5, 2020, general election.⁵
- 2) When he qualified as a candidate in the November 3, 2020, primary election, Respondent acknowledged that he was subject to the provisions of the CFDA.⁶
- 3) Respondent was required to file a 10-G report no later than November 25, 2020, the tenth day prior to the December 5, 2020, general election.⁷
- 4) Respondent did not file his 10-G report by the November 25, 2020, deadline or by December 6, 2020, the eleventh day after it was due.⁸
- 5) The BOE served Respondent with the *Request for Hearing* on June 28, 2021.⁹

CONCLUSIONS OF LAW

Respondent knowingly failed to file his 10-G report by the eleventh day after it was due. For this failure, the BOE is authorized to impose an additional civil penalty against Respondent as allowed by La. R.S. 18:1505.4(A)(4)(b).

Adjudicatory hearings under La. R.S. 18:1505.4(A)(4)(a) and (b) cover two kinds of campaign finance disclosure reports candidates must file in connection with elections. La. R.S. 18:1505.4(A)(4)(a) addresses reports that candidates must file between the time the candidate qualified for the election and the election day. La. R.S. 18:1505.4(A)(4)(b) addresses “other

⁴ See BOE-2 (Louisiana Secretary of State certificate and *Notice of Candidacy*).

⁵ BOE-3.

⁶ See BOE-2, p. 3.

⁷ BOE-4, p. 1; *see also* La. R.S. 18:1495.4(B)(5).

⁸ BOE-7 (Affidavit of Angela Newsom, Director of Campaign Finance for the BOE, stating that, as of October 8, 2021, Respondent had still not filed a 10-G report).

⁹ See BOE-5, p. 9.

reports” candidates must file in connection with elections that fall outside the time frame in the previous provision. In either case, the BOE must prove by clear and convincing evidence¹⁰ that the candidate knowingly¹¹ failed to file a required report within the six days or eleven days, respectively, following the date it was due.

Respondent was a candidate for District Attorney, 25th Judicial District Court, which is a district office.¹² Every candidate (or his campaign treasurer) for a district office is required to file certain campaign finance disclosure reports by the statutory deadlines.¹³ Failure to timely submit required reports constitutes a violation of the CFDA.¹⁴

As a candidate for a district office, Respondent was required to file a 10-G report by the tenth day prior to the general election.¹⁵ Respondent did not file a 10-G report by the statutory deadline or by the eleventh day after it was due.

If, after conducting an adjudicatory hearing, the EAB determines that Respondent knowingly failed to file a required campaign finance disclosure report within the applicable time period, then the BOE may impose an additional civil penalty not to exceed \$10,000 against Respondent for each report that he failed to timely file.¹⁶ Failure to file a required report within three days after the final date for filing creates a rebuttable presumption of intent to not file the report.¹⁷ Nothing in evidence rebuts this statutory presumption.

¹⁰ See La. R.S. 42:1141.5(C). “‘Clear and convincing evidence’, in general, means that the fact of guilt must be proven to a greater degree than by ‘a mere preponderance of the evidence’ but less than by ‘beyond a reasonable doubt.... The standard requires that the existence of the disputed fact be [h]ighly probable, that is, much more probable than its non-existence.’” *Louisiana State Bar Ass’n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

¹¹ La. R.S. 18:1505.4(A)(1).

¹² See BOE-4, p. 2, and La. R.S. 18:1483(7)(e) (defining “district office” as including all public offices elected parishwide).

¹³ La. R.S. 18:1495.4(A).

¹⁴ La. R.S. 18:1505.1(B).

¹⁵ La. R.S. 18:1495.4(B)(5).

¹⁶ La. R.S. 18:1505.4(A)(4).

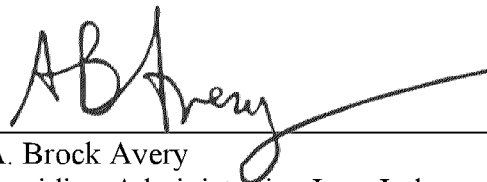
¹⁷ La. R.S. 18:1505.1(A).

With the benefit of the unrebutted statutory presumption of intent not to file, the BOE proved by clear and convincing evidence that Respondent knowingly violated the CFDA by failing to file his 10-G report by December 6, 2020, the eleventh day after it was due. As a result, the BOE is authorized to impose an additional civil penalty of up to \$10,000 as allowed by La. R.S. 18:1505.4(A)(4)(b).

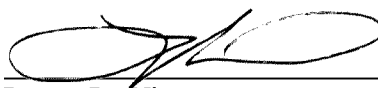
ORDER

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose an additional civil penalty not to exceed \$10,000 against Terry W. Sercovich for failing to file his 10-G campaign finance disclosure report by the eleventh day after it was due.

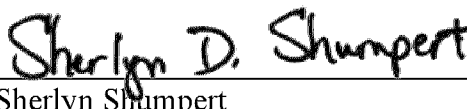
Rendered and signed on November 5, 2021, in Baton Rouge, Louisiana.



A. Brock Avery
Presiding Administrative Law Judge
Ethics Adjudicatory Board - Panel A



Lance B. Vinson
Administrative Law Judge
Ethics Adjudicatory Board - Panel A



Sherlyn Shumpert
Administrative Law Judge
Ethics Adjudicatory Board - Panel A

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Monday, November 08, 2021, I have sent a copy of this decision/order to all parties of this matter.

Clerk of Court
Division of Administrative Law

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in La. R.S. 49:959, with the time for filing calculated pursuant to Louisiana Code of Civil Procedure (La. C.C.P.) article 5059. To determine your review rights, you should act promptly.

To request rehearing, reopening, or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:
EABprocessing@adminlaw.la.gov

FAX documents to:
(225) 219-9820

MAIL documents to:
DAL – EAB Section
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 42:1142(A)(1), with the time for requesting judicial review calculated pursuant to La. C.C.P. art 5059. To determine your review rights, you should act promptly.